

IN THE MATTER OF	*	BEFORE THE
WASHINGTON PREMIER	*	COMMISSIONER OF
MORTGAGE CORPORATION	*	FINANCIAL REGULATION
Respondent	*	OAH NO.: DLR-CFR-76A-08-32247
*   *   *   *   *	*	*   *   *   *   *

### PROPOSED ORDER

The Findings of Fact, Conclusions of Law and Recommended Order of the Administrative Law Judge in the captioned case having been received, read and considered, it is, by the Commissioner of Financial Regulation (the "Commissioner") this 24<sup>th</sup> day of September, 2009,

A. **ORDERED** that the Findings of Fact in the recommended decision be, and hereby are, **AMENDED** by deleting in paragraph 2 "\$61,383" as the amount of finder's fees collected by Respondent and inserting in its place "\$56,053" as the amount of finders fees collected; and it is further

B. **ORDERED** that the Conclusions of Law in the recommended decision be, and hereby are, **ADOPTED**; and it is further

C. **ORDERED** that the Recommended Order be, and hereby is, **AMENDED** as follows:

**ORDERED** that Respondent's mortgage lender license be **REVOKED**; and it is further

**ORDERED** that, pursuant to Md. Code Ann. Comm. Law § 12-807, Respondent shall pay to the following borrowers the treble forfeiture amount of \$168,159.00 for finder's fees wrongfully retained, as itemized below:

1. [REDACTED] --\$13,155.00;
2. [REDACTED] --\$5,460.00;
3. [REDACTED] --\$15,990.00;
4. [REDACTED] --\$37,950.00;
5. [REDACTED] --\$11,334.00;
6. [REDACTED] --\$23,190.00;
7. [REDACTED] --\$12,630.00;
8. [REDACTED] --\$32,850.00; and
9. [REDACTED] --\$15,600.00; and it is further

**ORDERED** that Respondent shall, within sixty (60) days from the date that this Order becomes a final decision of the Commissioner, mail to each of the borrowers identified above the borrower's respective payment via U.S. First Class Mail at the addresses listed above or at any more recent address known to Respondent. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Respondent shall promptly notify the Office of the Commissioner in writing for further instruction as to the means of the making of said payment. Upon the making of a required payment, the Respondent shall furnish evidence of the making of said payment to the Office of the Commissioner within fifteen (15) days, which evidence shall consist of a copy of the front and back of the cancelled check for the payment; and it is further

**ORDERED** that Respondent shall pay to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation" a civil penalty in the amount of \$2,000 within fifteen (15) days from the date that this Order becomes a final decision of the Commissioner. Respondent shall send the civil penalty to

the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Baltimore, Maryland 21202, Attn: Suzanne Elbon, Administrator.

Pursuant to Maryland Code Ann., State Government § 10-220, the Commissioner sets forth the reasons for modifying the Recommended Order as follows: (i) the ALJ inaccurately stated that the total amount to be paid to the borrowers is \$184,149.00, whereas the correct amount is \$168,159.00; and (ii) it is the obligation and responsibility of Respondent to make the required forfeiture payments directly to the borrowers (rather than to the Commissioner) and to send to the Office of the Commissioner proof that these payments were made.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2). Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.



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Sarah Bloom Raskin  
Commissioner of Financial Regulation

OFFICE OF THE COMMISSIONER OF  
FINANCIAL REGULATION

v.

WASHINGTON PREMIER MORTGAGE  
CORPORATION

\* BEFORE WILLIAM SOMERVILLE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* OAH CASE NO: DLR-CFR-76A-08-32247

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On August 5, 2008, the Office of the Commissioner of Financial Regulation, Department of Labor, Licensing and Regulation (Agency) charged Washington Premier Mortgage Corporation (Licensee), a licensed mortgage broker, with violating the Financial Institutions Article, Annotated Code of Maryland. The Agency referred the matter to the Office of Administrative Hearings (OAH) for a hearing.<sup>1</sup>

On June 8, 2009, I held a hearing on the charges at the OAH in Hunt Valley, Maryland.. Assistant Attorney General Matthew A. Lawrence appeared on behalf of the Agency. The Licensee failed to appear.

As a preliminary matter, I determined that notice to the licensee was proper and the hearing proceeded without the Licensee. COMAR 09.01.02.07.

I heard this case pursuant to the applicable statute, Md. Code Ann., Fin. Inst. §11-518

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<sup>1</sup> The Agency delegated to the OAH the authority to issue proposed findings of fact and conclusions of law, and a proposed order.

(2003). Procedure in this case is governed by the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (2004 & Supp. 2008), OAH's Rules of Procedure, Code of Maryland Regulations (COMAR) 28.02.01, and COMAR 09.01.03.

### ISSUES

1. Did the Licensee violate the various code sections and regulations set forth in the notice of action (charge letter) dated August 5, 2008?
2. If so, what sanctions are appropriate?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The Agency submitted the following documents, which were admitted into evidence:

CFR 1- Licensing history of the Licensee, 6-5-09

CFR 2- Charge Letter, with attachments, 8-5-08

CFR 3- Copies of checks and money orders.

#### Testimony

Stephen Prozeralik, Assistant Commissioner for Enforcement and Complaints, testified on behalf of the Agency.

### FINDINGS OF FACT

Having considered the testimony, the demeanor evidence, and the other evidence presented, I find the following facts by a preponderance of the evidence:

1. During all relevant periods, the Licensee was a corporation that was licensed as a mortgage broker by the Agency.
2. Sometime before July 30, 2007, the Licensee entered into mortgage broker transactions with ten borrowers. The Licensee charged nine of those borrowers origination fees, broker's fees, and processing fees. The Licensee failed to enter into separate, written

broker's agreements with those nine borrowers and failed to specify the amount of a finders fee. The Licensee charged \$61,383 for those finder's fees. The Licensee also failed to provide all ten of the borrowers with finance agreements, as set forth in the Consent Order dated April 9, 2008 (Agency Exhibit 2) and incorporated herein.

3. On April 9, 2008, the Licensee entered into a Consent Order agreement with the Agency in which the Licensee acknowledged and admitted wrongdoing as set forth in the charge letter dated December 3, 2007. (Agency Exhibit 2.) The Licensee also acknowledged and admitted that "non-compliance with any provision of [the] Consent Order" can be considered as a violation of section 11-517(a)(5) of the Financial Institutions Code. In that Consent Order, the Licensee agreed to pay penalties in the amount of \$10,000, in "monthly installments" and agreed to provide certain proofs or assurances to the Agency.
4. On April 15, 2009, the Licensee paid \$1,000 to the Agency as its monthly payment toward the \$10,000 penalty assessed in the Consent Order.
5. On May 15, 2009, the Licensee attempted to pay \$1,000 to the Agency as its second monthly payment. The check was rejected by the Licensee's bank and returned for insufficient funds.
6. On May 23, 2009, the Licensee paid \$1,000 to the Agency by money order.
7. Thereafter, no payments were made to the Agency.
8. On August 5, 2009, after two monthly payments were missed by the Licensee, the Agency revived and re-filed the case, as authorized in the Consent Order. (Agency Exhibit 2.)
9. The Licensee was properly notified of the hearing date in this matter but failed to appear at the hearing.

## DISCUSSION

### **Burdens**

The Agency has the burdens of production and persuasion, by a preponderance of the evidence, to demonstrate that the Licensee violated the statutory sections at issue. *See* Md. Code Ann., State Gov't Art., § 10-217 (2004); *Comm'r of Labor and Indus. v. Bethlehem Steel Corp.*, 344 Md. 17 (1996).

### **Charges**

The Agency charged the Licensee with violating a statute, Md. Code Ann., Fin. Inst. § 11-517(a)(5), which provides:

§ 11-517(a) *Suspension or revocation of license – In general.* – Subject to the hearing provisions of § 11-518 of this subtitle, the Commissioner may suspend or revoke the license of any licensee if the licensee or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

...

(5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Md. Code Ann., Fin. Inst. § 11-517(a) (Supp. 2008).

In the instant case, the Agency has not demonstrated bad faith. “Bad faith” is the lack of good faith; it is sometimes manifested by refusal to fulfill a legal obligation for some interested or sinister motive. *Black’s Law Dictionary*: 176 (4<sup>th</sup> ed. 1957). The Agency has demonstrated, however, that the Licensee’s business has not been conducted honestly, fairly, equitably, and efficiently. Md. Code Ann., Fin. Inst. § 11-517(a). The Licensee failed, for some reason, to disclose agreement terms in writing and failed to disclose the fees it would charge. (Finding of Fact 2.) Moreover, the Licensee admitted, in writing, that it violated the code section. (Finding

of Fact 3.) The Agency has shown that the Licensee is subject to sanction under that code section.

The Agency charged the Licensee with violating a statute, Md. Code Ann., Fin. Inst. § 11-517(c)(2), which provides:

The Commissioner may enforce the provisions of this subtitle, regulations adopted under § 11-503 of this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and
2. Requiring the violator to take affirmative action to correct the violation including the restitution of money or property to any person aggrieved by the violation; and

(ii) Imposing a civil penalty not exceeding \$5,000 for each violation.

This portion of the code section is not a substantive charge. It is merely statutory authority to issue an administrative order and to impose fines. The Licensee did not violate this portion of the statute.

The Agency also mentioned in its charge letter a violation of another statute, Md. Code Ann., Comm'l Law §12-804(c), which provides:

A mortgage broker obtaining a mortgage loan with respect to the same property more than once within a 24-month period may charge a finder's fee only on so much of the loan as is in excess of the initial loan.

The Agency did not prove the elements of a violation of that charge. Facts were not alleged in the Consent Order, or elsewhere, that would satisfy some of the elements. The Licensee did, however, admit to a violation of that code section in the Consent Order. (Finding of Fact 3.)

The Agency also mentioned in its charge letter a violation of another statute, Md. Code Ann., Comm'l Law §12-805(d), which provides:



A finder's fee may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document.

The Agency demonstrated that the Licensee failed to execute a separate written agreement regarding finder's fees with nine borrowers. (Finding of Fact 3 and Agency Exhibit 2.)

The Agency also mentioned in its charge letter a violation of another statute, Md. Code Ann., Comm'l Law §12-125(b)(1), which provides:

A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on a 1- to 4-family home to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

The Agency did not prove the elements of a violation of that charge. Facts were not alleged in the Consent Order, or elsewhere, that would satisfy some of the elements. The Licensee did, however, admit to a violation of that code section in the Consent Order. (Finding of Fact 3.)

The Agency also mentioned in its charge letter a violation of an Agency regulation, COMAR 09.03.06.09A, which provides:

A licensee may not retain a fee, or any portion of a fee, collected from the borrower if the fee is represented as a charge to be paid to a third party for services in connection with the loan.

The Agency did not prove the elements of a violation of that charge. Facts were not alleged in the Consent Order, or elsewhere, that would satisfy some of the elements. The Licensee did, however, admit to a violation of that code section in the Consent Order. (Finding of Fact 3.)

### **Sanctions**

The Agency asks for an Order to revoke the Licensee's license pursuant to Md. Code Ann., Fin. Inst. § 11-517(a), asks for a civil penalty of three times the amount of finder's fees wrongfully retained (\$184,149), pursuant to Md. Code Ann., Comm'l Law § 12-807, and asks for a civil penalty of \$2,000 (based on two payments missed at the time when the charge letter was issued) pursuant to terms of the Consent Order and Md. Code Ann., Fin. Inst. § 11-517(c).

The Agency has demonstrated that revocation of the license is proper and authorized under the facts and circumstances of this case. The facts demonstrate a pattern of conduct that manifests either intentional wrongful conduct or incompetence. Md. Code Ann., Fin. Inst. § 11-517(a). *Md. Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005) (when the discretionary sanction imposed upon [a party] by an adjudicatory administrative agency is lawful and authorized, the agency need not justify its exercise of discretion by findings of fact).

With regard to the Agency's request for three times the wrongfully retained finder's fees (to be forfeited to the borrowers), the "treble damages" provision of Md. Code Ann., Comm'l Law §12-807 was set forth in the notice of action (charge letter) dated August 5, 2008. I can determine that the Licensee was notified that three times the amount alleged by the Agency to be wrongfully-retained finder's fees was in issue or was in jeopardy. The statutory scheme authorizes the forfeiture. There has been no showing that the Agency abused its discretion in choosing to ask for that relief. *Md. Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005) (when the discretionary sanction imposed upon [a party] by an adjudicatory administrative agency is lawful and authorized, the agency need not justify its exercise of discretion by findings of fact). The Agency has demonstrated that forfeiture of \$184,149 is appropriate.

The Agency has also demonstrated that a \$2,000 civil penalty under Md. Code Ann., Fin. Inst. § 11-517(c) is appropriate. The Licensee had missed two payments under the Consent Order when the charge letter was issued. The Agency could have asked for \$5,000 for each violation but chose, in its discretion, to ask for \$1,000. That penalty is appropriate under the facts and circumstances of this case.

### **CONCLUSIONS OF LAW**

Upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Licensee violated Md. Code Ann., Fin Inst. § 11-517(a)(5); Md. Code Ann., Comm'l Law

§12-804(c); Md. Code Ann., Comm'l Law §12-805(d); Md. Code Ann., Comm'l Law §12-125(b)(1) and COMAR 09.03.06.09A.

I further conclude, as a matter of law, that the Licensee is subject to civil penalties and revocation of its license. Md. Code Ann., Fin Inst. § 11-517; Md. Code Ann., Comm'l Law § 12-807 and *Md. Aviation Admin. v. Noland*, 386 Md. 556, 581 (2005).

**RECOMMENDED ORDER**

I **RECOMMEND** that the Commissioner of Financial Regulation:

**ORDER** that the Licensee's broker license be revoked, and further,

**ORDER** that the Licensee pay to the Agency a civil penalty of \$184,149 pursuant to Md. Code Ann., Comm'l Law § 12-807, to be distributed fairly to the borrowers named in the charge letter dated December 3, 2007, and further

**ORDER** that the Licensee pay to the Agency a civil penalty of \$2,000 pursuant to Md. Code Ann., Fin Inst. § 11-517, and further

**ORDER** that the records and publications of the Agency reflect this decision.

September 8, 2009  
Date Decision Mailed

William J.D. Somerville, III  
William J.D. Somerville, III  
Administrative Law Judge

WS/

# 107725